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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,411	03/19/2001	Guy Therien	42390.P10713	2443

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Tom Van Zandt  
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP  
Seventh Floor  
12400 Wilshire Boulevard  
Los Angeles, CA 90025-1026

EXAMINER

WANG, ALBERT C

ART UNIT

PAPER NUMBER

2115

DATE MAILED: 04/08/2004

7

Please find below and/or attached an Office communication concerning this application or proceeding.

2

# Office Action Summary

Application No.

09/812,411

Applicant(s)

THERIEN ET AL.

Examiner

Albert Wang

Art Unit

2115

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4-6</u> . | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

1. Original claims 1-16 are pending.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 6-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 6 discloses an apparatus comprising a first input node receiving a first signal that indicates processor utilization has exceeded a first threshold for a first period of time, and a second input node receiving a second signal that indicates processor utilization has fallen below a second threshold for a second period of time. While the specification describes a single processor utilization input into software (Page 8, lines 1-2), the specification does not describe an apparatus with first and second nodes for receiving first and second signals. Nor do the drawing show any signal lines for indicating processor utilization (Fig. 1).

3. Claims 6-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 6 discloses an apparatus comprising a first input node receiving a first signal that indicates processor utilization

has exceeded a first threshold for a first period of time, and a second input node receiving a second signal that indicates processor utilization has fallen below a second threshold for a second period of time. While the specification describes a single processor utilization input into software (Page 8, lines 1-2), the specification does not describe an apparatus with first and second nodes for receiving first and second signals. Nor do the drawing show any signal lines for indicating processor utilization (Fig. 1).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Malcolm et al., U.S. Patent No. 6,684,341 (“Malcolm”).

As per claim 1, Malcolm discloses a method comprising:

monitoring processor utilization of a computer system having a processor (Fig. 6, step 600), the processor having a plurality of performance levels (Col. 7, lines 30-37); and

automatically transitioning the processor to a higher performance level if it is determined that the processor utilization has remained above a switch-up level for a specified time (Fig. 6, step 608; Col. 8, lines 1-7).

As per claim 9, since Malcolm discloses the method of claim 1, Malcolm discloses the claimed machine-readable medium (Col. 4, lines 10-33).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-5, and 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malcolm as applied to claims 1 and 9 above, and further in view of Kung et al. U.S. Patent No. 6,574,739 ("Kung").

As per claim 2, Malcolm does not expressly teach the number of performance levels is two. Kung teaches that any plurality of performance levels may be employed, and specifically teaches employing two performance levels (Col. 5, lines 38-50). At the time of the invention, it would have been obvious to one of ordinary skill in the art to apply Kung's two performance levels to Malcolm's method. A motivation for doing so would have been to adapt to hardware restrictions (Kung, Col. 5, lines 38-50).

As per claim 3, Malcolm teaches the switch-up level is approximately 95% of a current processor performance level (Col. 7, lines 38-49).

As per claim 4, Malcolm teaches automatically transitioning the processor to a next lower performance level, if any, if it is determined that the processor utilization has remained below a switch-down level for a specified time (Fig. 6, step 606; Col. 8, lines 1-7).

As per claim 5, Malcolm teaches the switch-down level is approximately 95% of the next lower processor performance level (Col. 7, lines 38-49).

As per claims 10-12 and 14, since Malcolm/Kung teaches the method of claims 2-5, the combination teaches the claimed machine-readable medium.

As per claim 13, Malcolm/Kung teaches wherein the specified period of time that the processor utilization has remained above a switch-up level to transition the processor to a higher performance level is different than the specified period of time that the processor utilization has remained below a switch-down level to transition the processor to a next lower performance level (Malcolm, Fig. 6, Col. 8, lines 1-7; Kung, Col. 3, lines 51-66).

As per claim 15, Malcolm teaches the specified period of time that the processor utilization has remained above a switch-up level to transition the processor to a higher performance level is greater than a processor-utilization monitoring periods (Fig. 6; Col. 8, lines 1-7).

As per claim 16, Kung teaches the specified period of time that the processor utilization has remained below a switch-down level to transition the processor to a next lower performance level equal to the processor-utilization monitoring period (Col. 3, lines 51-66).

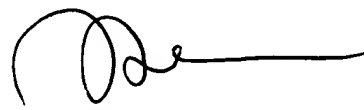
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Albert Wang whose telephone number is 703-305-5385. The examiner can normally be reached on M-F (9:30 - 6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas C. Lee can be reached on 703-305-9717. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

aw  
April 2, 2004

  
THOMAS LEE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100